3/52

SUPREME COURT OF THE UNITED STATES.

No. 189.

AARON B. COOLEY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF WARDENS OF THE PORT OF PHILADELPHIA, TO THE USE OF THE SOCIETY FOR THE RELIEF OF DISTRESSED PILOTS, THEIR WIDOWS AND CHILDREN.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA FOR THE EASTERN DISTRICT.

INDEX.

	Original.	Print.
Transcript from docket of Alderman Smith	2	2
Proceedings in court of common pleas	3	3
Rule on plaintiff	4	3
Declaration	5	3
Affidavit of defence	7	4
Demurrer	8	4
Docket entries and judgment	10	4
Writ of error to court of common pleas	11	5
Assignment of errors	14	6
Judgment of Supreme Court	15	6
Certificate of clerk	16	6
Citation and service	17	6
Bond to prosecute writ of error	19	7
Writ of error	21	8
Assignment of errors	24	9

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Pleas before the Hon. John Bannister Gibson, LL. D., chief justice of the supreme court of Pennsylvania, and his associate justices of the same court, at a supreme court in and for the eastern district of Philadelphia, of December term, 1847, No. 67, viz: It is thus contained:

Transcript from the document of Alderman Smith.

THE BOARD OF WARDENS of the Port of Philadelphia, to the use of the Society for the relief of distressed and decayed Pilots, their Widows and Children,
vs.
A. B. COOLEY.

Summons issued April 3d, 1847, returned 8th, at 4 p. m.; returned served personally, April 3d, 1847; April 8th, 1847; plaintiffs, by their counsel, and defendant, appear; plaintiffs claim $8 44 due by defendant as consignee of the schooner Undine, for the amount of half pilotage incurred under the act of 29th March, 1803, sec. 29, in consequence of the refusal of the master, Rupert Vanpelt, to take a pilot on the outward voyage in March last; continued to 9th inst., at 4 p. m.; and now, April 9th, 1847, parties appear as before. Benj. Holbrook, sworn for plaintiffs. After hearing, judgment for plaintiffs for $8 44. April 29, 1847, defendant appeals.

I become bail in $50 for defendant, conditioned that he will prosecute an appeal according to law. April 29, 1847.

JAMES R. WEBB,
24, *Sansom street.*

Costs 94.—Appeal 50.

I certify that the above is a true transcript from my docket in the above case. Witness my hand and seal, April 29, 1847.

THOMAS D. SMITH, [SEAL.]
Alderman.

Appeal filed April 29, 1847.

THE BOARD OF THE WARDENS of the Port, &c.
vs.
A. B. COOLEY.
No. 158.

In C. P., June term, 1847.

Enter rule upon the plaintiffs to declare in eight days, or judgment sec. reg.

J. R. TYSON,
For defendant.

July 20, 1847.
To Pro'y C. P.
Rule to declare, &c., filed July 20, 1847.

In the court of common pleas of Philadelphia county, of June term, 1847, No.

PHILADELPHIA COUNTY, *ss.*

The Board of Wardens for the port of Philadelphia, who sue to the use of the Society for the relief of distressed and decayed Pilots, their widows and children, by St. George T. Campbell, their attorney, complain of A. B. Cooley, who has been summoned to answer the plaintiffs, who sue as aforesaid in an action of debt, and the plaintiffs demand of the defendant that he render to them, to the use aforesaid, a large sum of money, to wit, the sum of eight dollars forty-four cents, which he owes to and unjustly detains from them.

For that whereas heretofore, to wit, on the twentieth day of March, A. D. 1847, the defendant was the consignee of a certain schooner of more than seventy-five tons burthen, then named the Undine, of which one Rupert Vanpelt was then the master.

And whereas the said schooner, on the day and year last aforesaid, and while the defendant was the consignee, and the said Vanpelt the master thereof as aforesaid, sailed without being towed by steam from the port of Philadelphia to a certain port not within the river Delaware, the said schooner then and there drawing seven and a half feet of water; and the plaintiffs aver, that although a pilot could have been obtained by the said master within twenty-four hours after said schooner was ready to depart from the said port as aforesaid, yet the said master of the said schooner neglected to take a pilot for said schooner from said port, contrary to the act of the general assembly in such case made and provided; whereby and by force of the said statute an action hath accrued to the said plaintiffs to demand and have of and from the said defendant, as consignee as aforesaid, the sum of eight dollars forty-four cents, being a sum equal to the half pilotage of said schooner. Yet the said defendant has not paid the same, or any part thereof, to the plaintiffs' damage of fifty dollars. And therefore they bring suit, &c.

J. F. JOHNSTON,
For ST. GEO. T. CAMPBELL.

Narr. filed September 8, 1847.

Enter rule to plead in 8 days, or judgment sec. reg.

ST. GEO. T. CAMPBELL.

THE BOARD OF WARDENS, &c.
vs.
A. B. COOLEY.

C. P., June T, 1847, No. 158.

The defendant above named being duly sworn according to law, says that the appeal in this case is not intended for delay, but because he verily believes that he has a good and legal defence to this action. He further says he is not indebted to the plaintiffs in any sum whatever.

A. B. COOLEY.

Sworn to and subscribed on this tenth day of June, A. D. 1847, before me,

CHANCEY BULKLEY.

Affidavit of defence filed June 10, 1847.

In the court of common pleas for the city and county of Philadelphia, of September term, 1847, No. 158.

THE BOARD OF WARDENS
vs.
COOLEY.

And the said defendant, by P. P. Morris and J. R. Tyson, his attorneys, comes and defends the wrong and injury, when, &c., and says that the said declaration, and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore by reason of the insufficiency of the said declaration in this behalf the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him, &c.

MORRIS, *for Defend't.*

Demurrer filed September 11, 1847.

In the court of common pleas, Philadelphia county, June term, 1847, No. 158.

THE BOARD OF WARDENS of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children,
vs.
A. B. COOLEY.
158.

Appeal by defendant from judgment of Alderman Smith, obt. April 9, 1847, for $8 44, costs $0 94; April 29, 1847, James R. Webb, tent. in $50.

Filed April 29, '47. J. R. TYSON.

June 10th, 1847, aff. of def. filed; July 20th, 1847, rule to declare, &c., filed; Sept. 8, 1847, narr. filed; Sept. 11, 1847, demurrer filed; Sept. 14, 1847, rule to show cause why narr. should not be amended; Sept. 18, 1847, rule absolute; Nov. 27, 1847, writ of error brought into office; November 22, 1847, judgment for plaintiff on demurrer.

Certified from the record.

P. S. BROWN,
Pro Prothonotary.

3150.

EASTERN DISTRICT PENNSYLVANIA, *sct.*

[SEAL.] The Commonwealth of Pennsylvania, to the justices of the court of common pleas of Philadelphia county, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between A. B. Cooley, plaintiff in error, and the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children, defendants in error, as it is said, manifest error hath intervened to the great damage of the said plaintiff in error, as by the complaint of the same plaintiff in error we have received information; we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Philadelphia, in and for the eastern district of said commonwealth, on the second Monday of December next, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the honorable John Bannister Gibson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-seven, and of the commonwealth the seventy-second.

A. M. COHEN,
For J. S. COHEN,
Prothonotary.

Allowed by MOLTON C. ROGERS.
(Endorsement on writ of error.)

67—December term, 1847, supreme court.

A. B. COOLEY, plaintiff in error,
vs.
THE BOARD OF WARDENS of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children, defendants in error.

June term, 1847, No. 158.

Writ of error to the court of common pleas for the county of Philadelphia, returnable the second Monday of December, 1847.

P. P. MORRIS,
J. R. TYSON.

Nov. 27, 1847, brought into office.

To the honorable the judges within named.

The record and proceedings and all things touching the same, we send as within we are commanded. So answers

E. KING,
JAMES CAMPBELL.

In supreme court, E. D. P., December term, 1847, No. 66.

A. B. COOLEY
vs.
THE BOARD OF WARDENS, &c.

Assignment of errors.

The court erred in entering judgment on the demurrers in favor of the plaintiff below.

P. P. MORRIS,
J. R. TYSON,
For plaintiff.

November 30, 1847.

Assignment of errors, filed November 30th, 1847.

And now, January 31st, 1850, the said cause came on to be heard before the honorable John Bannister Gibson, chief justice, and the honorable Molton C. Rogers, Thomas Burnside, Richard Coulter, and Thomas S. Bell, justices, and after due consideration it was ordered by the court that "the judgment of the court of common pleas for the city and county of Philadelphia be affirmed, because this court is of opinion that the twenty-ninth section of the act of the State of Pennsylvania, of the twenty-ninth March, A. D. 1803, entitled an act to establish a Board of Wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned, is not in any of its provisions involved in this cause, at variance with any of the provisions of the Constitution or laws of the United States, but is a constitutional and legal enactment.

I certify the foregoing to be a true, full, and accurate copy of the whole record in the above case.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court at Philadelphia, this thirteenth day of June, A. D. 1850.

[SEAL.]

J. SIMON COHEN, *Prothonotary.*

The United States of America, to the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows, and children, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Pennsylvania, for the eastern dis-

trict, wherein Aaron B. Cooley is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert C. Grier, an associate justice of the Supreme Court of the United States, this twelfth day of February, in the year of our Lord one thousand eight hundred and fifty.

R. C. GRIER.

On this thirteenth day of June, in the year of our Lord one thousand eight hundred and fifty, personally appeared Jacob Nullet before me, the subscriber, clerk of the circuit court of the United States for the eastern district of Pennsylvania, and makes oath that he delivered a true copy of the within citation to Harman Yerkes, master warden at the office of the Board of Wardens of the port of Philadelphia, on the twenty-third day of February, A. D. 1850.

GEORGE PLITT, *Clerk, C. C.*

Know all men by these presents, that we, Aaron B. Cooley and Thompson Black, of the city of Philadelphia, are held and firmly bound unto the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, in the full and just sum of five hundred dollars, to be paid to the said the Board of Wardens of the port of Philadelphia, to the use aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this ninth day of February, in the year of our Lord one thousand eight hundred and fifty.

Whereas lately, in the supreme court of the Commonwealth of Pennsylvania, in the eastern district, in a suit depending in said court, between Aaron B. Cooley, plaintiff in error, and the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, defendants in error, as of December term, 1847, No. 67, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants in error, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiff in error shall prosecute the writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

AARON B. COOLEY, [L. S.]
THOMPSON BLACK. [L. S.]

Sealed and delivered in presence of—
GEORGE PLITT,
P. P. MORRIS.

Approved by Molton C. Rogers, associate justice of the supreme court.

R. C. GRIER.

On the ninth day of February, A. D. 1850, before me, came the within named Aaron B. Cooley and Thompson Black, who being severally affirmed, did depose and say that they are householders in the city of Philadelphia, and worth each of them more than five hundred dollars beyond all their debts and liabilities.

GEORGE PLITT,
U. S. Commissioner.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the supreme court of Pennsylvania, for the eastern district, greeting:

[L. S.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Aaron B. Cooley, plaintiff in error, and the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Aaron B. Cooley, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

A. C. GRIER,
Associate Justice S. C. U. S.

Writ of error.

To the honorable the chief justice and his associates, justices of the Supreme Court of the United States, at the city of Washington, within named:

The record and proceedings in the plea within named, with all things touching the same, so full and entire as before us they remain, we certify and send, together with this writ, as within we are commanded.

JOHN B. GIBSON,
MOLTON C. ROGERS,
TH. BERNARD,
R. COULTER,
THOS. S. BELL.

In the Supreme Court of the United States.

AARON B. COOLEY
vs.
THE BOARD OF WARDENS of the port of Philadelphia, to use, &c.

Assignment of errors.

The supreme court of the State of Pennsylvania erred in affirming the judgment of the court of common pleas, for the city and county of Philadelphia.

P. P. MORRIS,
J. R. TYSON,
For pl'ff in error.